

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Haiyan Lin and Carolina Supply and Services,)
)
)
Appellant,)
)
vs.)
)
South Carolina Department of Labor,)
Licensing and Regulation, SC Contractors')
Licensing Board,)
)
Respondent.)
_____)

Docket No. 14-ALJ-11-0610-AP

**ORDER ON MOTION TO
DISMISS**

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JUL 24 2015

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Haiyan Lin (Lin) and Carolina Supply and Services (Carolina Supply) (collectively, Appellants). Appellants are appealing a determination by the South Carolina Department of Labor, Licensing and Regulation, SC Contractors' Licensing Board (LLR) that Appellants violated S.C. Code Ann. §40-11-110(A)(21) resulting in sanctions against Appellants.

On August 6, 2014, LLR issued a Final Order (Order) affirming a citation issued to Appellants and ordering Appellants pay a fine or have its license administratively suspended pending compliance with the Order. LLR mailed a copy of the Order to Carolina Supply at the address on file with LLR on August 6, 2014. On November 25, 2014, LLR personally served Lin with a copy of the Order.

Appellants filed a Notice of Appeal on December 23, 2014. By Memorandum (Memo) dated January 13, 2014, the Clerk of the ALC notified Appellants that the case would not be assigned to a Judge because Appellants had not paid a filing fee. See Rule 33 of the Rules of Procedure for the ALC (ALC Rules).¹ The Memo also required that the filing fee be paid within 10 days of the date of the Memo or the case would be returned to Appellants. On March 16, 2015,

¹ ALC Rule 33 provides "Any notice of appeal which is incomplete or not in compliance with this rule or Rule 71 will not be assigned to an administrative law judge until all required information is received and the filing fee is processed."

FILED

June 15, 2015

SC ADMIN. LAW COURT

after receiving no response from Appellants, the Clerk of the ALC returned the Request for Appeal to Appellants noting that Appellants failed to comply with the timeframe as set forth in the Memo.

By letter dated March 20, 2015, Lin notified the Court that she had been out of town and requested that she be allowed to pay the filing fee in installments. On March 31, 2014, Appellants paid the filing fee. The Court issued the Notice of Assignment on April 2, 2015.

On April 10, 2015, Lin sent a letter to the Court, and copied LLR, seeking protection in this case "from April 13, 2014 until she returned" from Hong Kong. On April 20, 2015, LLR filed a Motion to Dismiss (Motion) claiming the appeal was untimely and the April letter for continuance failed to conform to court rules and directives. Appellant did not respond to the Motion but did send the Court a letter dated May 18, 2015 stating she wanted a hearing in her case as soon as possible.

DISCUSSION

LLR filed the Motion to Dismiss asserting that this appeal should be dismissed because Appellant has not complied with applicable court rules and directives in filing the appeal and in requesting protection in this appeal.

Timeliness

LLR moves to dismiss this case for failure to file the appeal within thirty days of the date of service of the Order. LLR served Appellants with a copy of the Order by mail on August 6, 2014. In addition, LLR personally served Lin with the Order on November 25, 2014.

Cases heard by the Administrative Law Court in its appellate capacity are reviewed in the same manner as prescribed in Section 1-23-380. S.C. Code Ann. § 1-23-600(E) (Supp. 2014). S.C. Code Ann. § 1-23-380(1) (Supp. 2014) provides "[P]roceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency" Rule 203(b)(6) of the South Carolina Appellate Court Rules (SCACR) provides that a notice of appeal from an order of an ALC or administrative tribunal shall be served within thirty days "after receipt of the decision." ALC further Rule 33 states "[T]he notice of appeal from the final decision of an agency shall be filed with the Court and a copy served on each party and the agency whose final decision is the subject of the appeal **within thirty (30) days of receipt** of the decision from which the appeal is taken." (Emphasis added). See also, *Hamm v. S.C. Pub. Serv. Comm'n*, 287 S.C. 180, 181-82, 336 S.E.2d 470, 471 (1985) (holding that despite section 1-23-380's language suggesting the thirty days to

appeal runs from the date an agency made its decision, an appellant actually has "thirty days after notice of a decision to bring an appeal"). Although there is evidence that the Order was mailed to Appellants on August 6, 2015, LLR provided no evidence reflecting when that mailing was received. Nevertheless, it is undisputed that LLR personally served the Order on Lin on November 25, 2014. Therefore, I find that Appellants received the Order on November 25, 2014 and the initial attempt to file this appeal on December 23, 2014 was timely.²

Failure To Comply With Court Rules

LLR also moved to dismiss the case because Appellants have failed to follow the directives and rules of the Court. LLR lists several instances of Appellants' failure to follow Court rules and directives

LLR notes that when Appellants initially filed this appeal in December 2014, they failed to submit the filing fee to the Court. By Memo dated January 13, 2015, the Clerk of the ALC notified Appellants that the case would not be assigned until the appropriate filing fee was paid. The Memo also notified Appellants that if the Court did not receive the filing fee by January 23, 2015, the case would be returned unprocessed. Appellants failed to pay the filing fee. Accordingly, the Clerk served the Appellants and LLR with a "Notice Case Returned Unprocessed" on March 16, 2015.

On March 20, 2015, Appellant Lin sent a letter to the Court stating that she had been out of town and requested the Court "to keep my appeal on file open" until the filing fee was paid.³ Also by letter dated March 20, 2015, Lin informed LLR that she was "refiling" the appeal.

LLR filed this Motion on April 20, 2015. As of the date of this Order, Appellants have not responded to the Motion.⁴

ALC Rule 38 provides that: "Upon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal or resolve the appeal adversely to the offending

² Nonetheless, the initial attempt to file this appeal was unavailing, since Appellants failed to submit the filing fee within the time specified in the Clerk's Memo and the case was returned unprocessed.

³ The Court is aware that as of March 20, 2015, Appellants still had not paid the filing fee. Moreover, on March 20, 2015 there was no "appeal on file" to keep "open" since the case was never assigned and had been returned unprocessed.

⁴ The Court notes that Appellant Lin did send letters to the Court and to LLR stating that she was going to Hong Kong and needed protection. However, she did not provide any timeframe needed for protection nor did she provide an email address as required by ALC Rule 33(A). ALC Rule 33(A) requires the e-mail address of the party requesting the appeal and other authorized representatives of that party.

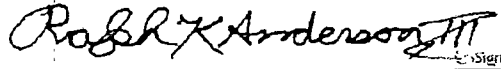
party for failure to comply with any of the rules of procedure for appeals. . . .” No specific ALC rule sets forth the timeframe to respond to a motion in appellate cases before the ALC. Nevertheless, the ALC may apply the South Carolina Appellate Court Rules (SCACR) to resolve questions not addressed by the ALC Rules. *See* ALC Rule 68. Rule 240(e), SCACR states any party opposing a motion or petition shall have ten (10) days from the date of service of the motion to file a return to the motion and failure to timely file a return may be deemed a consent by that party to the relief sought in the motion.

Once the appeal documents were returned to Appellants as unprocessed on March 16, 2015, the initial attempt to file an appeal was no longer valid and Appellants could not proceed without filing a new appeal. Lin noted in her March 20 letter to LLR that she was refile her appeal. On March 20, 2015, more than 30 days had lapsed since Appellant received the Order. The South Carolina Supreme Court has set forth that a court must dismiss an appeal when the appellant fails to file an appeal or serve a party with the notice of appeal in a timely manner. *See Southbridge Props., Inc. v. Jones*, 292 S.C. 198, 355 S.E. 2d 535 (1987) (applying appellate court rules and dismissing case for failure to serve a notice of intent to appeal in a timely manner); *Mears v. Mears*, 287 S.C. 168, 337 S.E. 2d 206 (1985) (applying appellate court rules and finding lack of jurisdiction for failure to serve a notice of intent to appeal in a timely manner). Additionally, it is also well-established that an appellate body may not extend the time to appeal. *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 714 S.E.2d 547 (2011); *see also Burnette v. S.C. State Highway Dep't*, 252 S.C. 568, 167 S.E. 2d 571 (1969) (holding that a court does not have the authority to extend the time for filing an appeal, or for serving notice of appeal, from a decision of an administrative agency). Accordingly, any subsequent attempt by Appellants to “refile” the appeal after the case was returned unprocessed was untimely and the Court is required to dismiss the appeal.

A *pro se* litigant who knowingly elects to represent herself “assumes full responsibility for complying with substantive and procedural requirements of the law.” *State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013) (quoting *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003)). “Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.” *Goodson v. American Bankers Ins. Co. of Florida*, 295 S.C. 400, 403, 369 S.E.2d 687, 689 (Ct. App. 1988) This Court recognizes the severe result of this decision but is constrained by the rules and legal

precedent in this State. *See McClain v. Ingram*, 314 S.C. 359, 444 S.E.2d 512 (1994). *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.")

IT IS THEREFORE ORDERED that the case is **DISMISSED WITH PREJUDICE.**
AND IT IS SO ORDERED.

A handwritten signature in black ink that reads "Ralph King Anderson, III". The signature is written in a cursive style. To the right of the signature, there is a small, faint "e-Sign" logo.

Ralph King Anderson, III
Chief Administrative Law Judge

June 15, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair

E. Harvin Belser Fair
Judicial Law Clerk

June 15, 2015
Columbia, South Carolina

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